

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, *ex rel.*
JAMES F. ALLEN,

Plaintiff,

v.

ALERE HOME MONITORING, INC.;
ADVANCED CARDIO SERVICES;
CARDIOLINK CORP.; and TAMBRA
INVESTMENTS, INC. d/b/a REAL TIME
DIAGNOSTICS,

Defendants.

Civil Action No. 16-cv-11372-PBS

**PLAINTIFF-RELATOR JAMES F. ALLEN'S MOTION FOR LEAVE TO FILE REPLY
MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY FROM
ALERE HOME MONITORING, INC.**

Plaintiff-Relator James F. Allen ("Allen") hereby moves this Honorable Court to grant leave to Allen to file a reply memorandum in support of his motion to compel discovery from defendant Alere Home Monitoring, Inc. ("Alere"). This reply memorandum is necessary to address (1) incorrect arguments raised by Alere's brief in opposition, (2) critical issues that remain in dispute between the parties despite several constructive communications and conferences, and (3) new evidence since Allen's motion to compel discovery was filed. The reply memorandum Allen requests leave to file is attached hereto.

Allen assures the Court that the proposed reply memorandum is narrowly tailored to address only issues that are critical to moving forward with a discovery process that is as fair as possible. Allen has continued to attempt to resolve these disputes with Alere, including numerous offers to enter into stipulations to set a reasonable deadline to produce documents, but has been

unsuccessful in obtaining any commitment from Alere. Allen first offered to stipulate to a reasonable date for the production of documents on November 16, 2018 and reiterated his willingness to so stipulate on multiple occasions, including as recently as December 18, 2018. Allen remains willing to agree that Alere can complete its document production by January 4, 2019, which will give it nearly three (3) months since requests were served and more than half of the total discovery period just to produce responses to Allen's initial discovery requests served on the date fact discovery opened (i.e., October 12, 2018). Alere simply refuses to commit to responding to Allen's reasonable discovery requests, which is the reason Court intervention is necessary. Alere's first tranche of documents confirms the importance of the arguments raised by Allen's motion to compel (that Alere's date range and search term limitations are improper), as they include clearly relevant documents that are dated years before the date ranges Alere unilaterally and arbitrarily set for production and numerous documents created by Alere employees using abbreviations and terms of art that are not included in Alere's proposed search terms.

Although Allen remains willing to stipulate to resolve all of these three (3) critical issues, Alere has refused to do so and the discovery period is eroding. Thus, Allen is constrained to file this motion for leave in order to raise these important issues before the motion hearing that is presently set for January 4, 2019. Allen requested – and Alere agreed to participate in – a third conference to discuss Alere's ongoing discovery deficiencies, which is scheduled for December 20, 2018. Allen remains hopeful that Alere will stipulate to resolve at least some of these discovery disputes (especially in light of the ample evidence confirming the impropriety of Alere's current proposed discovery limitations). If this happens, Allen will immediately file that stipulation with the Court and withdraw as much of his motion to compel as possible.

WHEREFORE, Allen respectfully requests that this Court enter an Order granting leave for Allen to file a reply memorandum in support of his motion to compel discovery from Alere.

Respectfully Submitted,

SMITH & BRINK, P.C.

/s/ Andrew H. DeNinno

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Dated: December 19, 2018

LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(A)(2), the undersigned counsel hereby certifies that counsel for Plaintiff-Relator Allen conferred in good faith with counsel for defendant Alere Home Monitoring, Inc. concerning this motion, but the defendant does not consent to this motion and has indicated that it intends to oppose this motion.

/s/ Andrew H. DeNinno

Andrew H. DeNinno

CERTIFICATE OF SERVICE

I, Andrew H. DeNinno, attorney for Plaintiff-Relator James F. Allen, hereby certify that I served a copy of the foregoing motion via ECF to all counsel of record identified on the Notice of Electronic Filing on December 19, 2018.

/s/ Andrew H. DeNinno

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Dated: December 19, 2018